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ARIZONA CORPORATION COMMISSION

September 29, 2008

The Honorable Marsha H. Smith, President
National Association of Regulatory Utility Commissioners
1101 Vermont Ave., N.W., Suite 200
Washington, DC 20005

Dear Commissioner Smith:

We wanted to write to you regarding your testimony earlier this summer before the U.S. Senate Committee on Energy and Natural Resources. Your testimony touched upon both the state of the nation's transmission grid and the implementation of the 2005 Energy Policy Act (EPAct 2005). Among the points you made was that to have the greatest economical and environmental benefits, transmission facilities should be regionalized. You also stated, however, that this regionalization needs to be encouraged rather than required and states need to have an active role in transmission decisions. Additionally, you made reference to NARUC's original concerns with the Federal Energy Regulatory Commission's (FERC) potential ability under EPAct 2005 to vacate a state line siting decision and preempt state law and actions, and said that only future FERC decisions would reveal whether this concern was warranted. You specifically reported on the Western perspective that FERC should not be able to second guess a state if the state turns down a transmission line proposal for good reason and within a reasonable timeframe. We thank you for your effort to relay the NARUC member concerns to the federal government. While we do agree in large part with your testimony, we have concern with respect to certain points that you made.

Although our Commission agrees that regional planning is important, we firmly believe that the state of Arizona is in the best position to determine the need for transmission line projects in or through our state and the impact of these projects on the reliability and economy of the regions' electrical transmission grid. States that act in a responsible and timely fashion should play not just an active role in transmission decisions, but should maintain primary responsibility for siting transmission lines within their boundaries. We take this role seriously, as demonstrated by our extensive transmission planning process, our public, judicial and rigorous fact-finding line siting process and our proven track record for approving transmission line projects. The following information explains each of these in greater detail.

Transmission Planning

The Arizona Corporation Commission (ACC) employs a collaborative process for transmission planning. In 2000, the ACC initiated, pursuant to statute,¹ a Biennial Transmission Assessment (BTA) process that evaluates the adequacy of existing and planned transmission facilities in Arizona to reliably meet the present and future needs of Arizona customers. The BTA is prepared using various studies and technical reports/documents filed with the ACC.

¹ Arizona Revised Statutes, §40-360.02(G)

Additionally, as you may be aware, extensive regional planning studies have been conducted in Arizona and the Western U.S. by transmission planning and government agency groups that work together, including: the Southwest Area Transmission Regional Planning Group, which is composed of Arizona, New Mexico and parts of Southern California, West Texas, Southern Nevada and Southern Colorado; WestConnect, which is composed of utility companies providing electric transmission in the Southwestern U.S. and works collaboratively to assess stakeholder and market needs and to develop cost-effective enhancements to the western wholesale electricity market; and the Western Electricity Coordinating Council, which is responsible for coordinating and promoting electric system reliability in the nearly 1.8 million square miles it encompasses. Therefore, Arizona has in place a transmission planning process that draws upon both state and regional resources.

Line Siting Process

Arizona employs a rigorous line siting process that has been in place since 1971 when the Legislature enacted the Arizona Power Plant and Line Siting Committee Statutes, requiring the ACC to establish the Arizona Power Plant and Transmission Line Siting Committee (Committee).² The Committee, which is comprised of five ex-officio members who represent different state agencies and six members appointed by the ACC, evaluates applications to build power plants of 100 megawatts or more and transmission projects of 115,000 volts or more in the state. Arizona statutes require the Committee to hold a public hearing at which the applicant and any groups or individuals who are granted party, or intervenor, status testify and answer questions. At the end of the hearing, the Committee members vote on whether to grant or deny the applicant a Certificate of Environmental Compatibility (CEC), which is a formal document that is necessary for the building of the power plant or transmission line. If granted, the CEC is then forwarded to the ACC for approval. If denied, the applicant may request the ACC to rehear the matter. Per statute and administrative regulation, the entire process, including any requested review or reconsideration, must take no longer than 285 days; however, the clock may be stopped under certain circumstances, which could elongate the process.

In issuing a CEC, specific factors, including the environmental and economic impacts of the proposed plant or line, must be taken into consideration. The Committee has broad discretion and can require a plant or transmission line to conform to certain conditions. Additionally, within the parameters of the law, the ACC can amend a CEC to include conditions it deems necessary to mitigate environmental impacts and enhance system reliability with overall consideration for the broad public interest. A decision is rendered by the ACC and often an approval will be subject to various conditions involving design, construction and operating particulars that have been brought forward from the Committee and ACC reviews and ensure the need of a project is fairly weighed against the project's environmental impact.

Recent Line Siting Activity

The ACC has a history of pro-actively siting generation and transmission lines within Arizona—since the enactment of the relevant statutes, the ACC has decided 137 applications, only 4 of which have been denied. In fact, since 1999, the ACC has sited approximately 14,803 megawatts of generation and 739 miles of transmission lines. Further generation and transmission siting projects are pending.

² Although the core of the ACC's work is based on the powers and duties spelled out in the Arizona Constitution, plant and transmission line siting is an area of authority delegated to the ACC by the Arizona Legislature (Arizona Revised Statutes, Chapter 2, Article 6.2).

Conclusion

In summary, while we agree that regional planning is important as demonstrated by our current participation in regional planning efforts, we believe that ultimately, the state of Arizona is in the best position to determine the need for a proposed transmission line within our boundaries and to balance this need with the potential impacts on the residents of our state. As such, we have developed a comprehensive line siting process that is specific to the needs and characteristics of our state. History shows that Arizona's siting process has been effective and cannot be characterized as obstructionist or provincial. Therefore, we believe that Arizona should maintain not just an active role in making transmission decisions, but the primary role.

Additionally, we agree with NARUC's early concerns regarding FERC's ability to overturn or preempt a state line siting decision and believe that there is no need to wait to determine whether these were valid concerns. FERC has already taken the first step in this direction by allowing Southern California Edison to prefile an application for its Devers-Palo Verde No. 2 Project, for which the ACC denied approval after a careful balancing of the needs for the project, the benefits for Arizona residents, and the environmental impacts. While we do recognize that there may be cases in which a "backstop" authority could be necessary because a state does not take action on a proposed project in a timely fashion, does not act in a just manner or has no transmission siting process in place, this has not been the case in Arizona. We believe that FERC's interpretation of the EPAct 2005 thus far, does not enhance our ability to fulfill our statutory obligations. On the contrary, we are likely at a disadvantage in carrying out our responsibilities due to the added measure of uncertainty in the finality of our recommendations. Additionally, the conditional approval often a part of our decisions is subject to renegotiation at FERC without the full benefit of the process used to arrive at those conditions. As a result, we believe it is important that Congress clarify that FERC's role is truly as a "backstop" authority, and nothing more.

Again, we thank you for your efforts to influence Congressional action relating to transmission grid planning and line siting. We urge you to keep our concerns in mind.

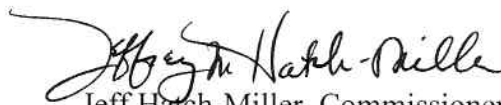
Sincerely,



Mike Gleason, Chairman



William A. Mundell, Commissioner



Jeff Hatch-Miller, Commissioner



Kristin K. Mayes, Commissioner



Gary Pierce, Commissioner